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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D. C. 20536



Public Copy

FILE:

Office: Houston

Date:

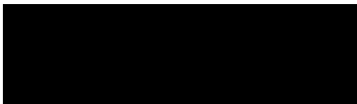
IN RE: Applicant:

MAR 17 2001

APPLICATION:

Application for Certificate of Citizenship under § 341(a) of the
Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT:



**Identification data deleted to
prevent clearly unwarranted
invasion of personal privacy.**

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Houston, Texas, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant was born in Germany on March 24, 1973 out of wedlock. The applicant's mother, Helga Ursula Saalfrank, was born in Germany in May 1946 and never had a claim to U.S. citizenship.

According to the district director's decision, the applicant had previously filed an application for certificate of citizenship claiming that he acquired U.S. citizenship at birth through a U.S. citizen father named [REDACTED] Mr. [REDACTED] was born in the United States in November 1953 and married the applicant's mother on September 25, 1975. The applicant indicates that he was lawfully admitted for permanent residence on June 29, 1973 along with his mother. Mr. [REDACTED] died in August 1976.

It is noted that the complete Service records of the applicant and his mother, [REDACTED] are not present for a review, including the applicant's and his mother's immigrant visa petitions, immigration classifications, immigrant visa applications. Should this matter appear before the Associate Commissioner, it must be accompanied by the complete Service records of the applicant and his mother.

The applicant claims eligibility for a certificate of citizenship alleging that he acquired United States citizenship through his father as a child born out of wedlock or as a child legitimated before age 21 under the law of the father's domicile under § 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1409.

The district director determined the applicant had failed to establish his father met the physical presence requirements in effect at the time of the applicant's birth. The district director denied the application accordingly.

On the present application, the applicant states that his real father is [REDACTED] who was born in the United States in December 1953. Mr. [REDACTED] signed an affidavit of paternity on March 7, 2000 alleging that he is the natural father of [REDACTED] and that another man, [REDACTED], acted as and presented himself to be the applicant's father. Counsel refers to Mr. [REDACTED] as the applicant's stepfather, but the record fails to show that the applicant's mother ever married Mr. [REDACTED]. No genetic tests have been completed to determine whether Mr. [REDACTED] is the applicant's biological father.

On appeal, counsel requests a ruling on the constitutionality of § 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1409. It was held in Matter of Church of Scientology International, 19 I&N Dec. 593 (Comm. 1988), that the Service cannot pass upon the constitutionality of the statute it administers. In Matter of Cortez, 16 I&N Dec. 289 (BIA 1977), the Board stated that we have

no power to declare unconstitutional the statutes which we administer.

Section 309 of the Act provides, in part, that:

(a) The provisions of paragraphs (c), (d), (e), and (g) of § 301, and paragraph (2) of § 308, shall apply as of the date of birth to a person born out of wedlock if-

(1) a blood relationship between the person and the father is established by clear and convincing evidence,

(2) the father had the nationality of the United States at the time of the person's birth,

(3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and

(4) while the person is under the age of 18 years-

(A) the person is legitimated under the law of the person's residence or domicile,

(B) the father acknowledges paternity of the person in writing under oath, or

(C) the paternity of the person is established by adjudication of a competent court.

The record before the Associate Commissioner fails to establish the Mr. [REDACTED] is related to the applicant by blood, or while the applicant was under the age of 18 years Mr. [REDACTED] legitimated the applicant, acknowledged paternity or that paternity was established by adjudication in a competent court.

8 C.F.R. 341.2(c) provides that the burden of proof shall be upon the claimant, or his parent or guardian if one is acting in his behalf, to establish the claimed citizenship by a preponderance of the evidence. The applicant in this matter has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.